

DIVISION III

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, Judge

CA 05-1211

May 10, 2006

LOIS WASHINGTON
APPELLANT
V.

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [F202082]

UNIVERSITY OF ARKANSAS at
MONTICELLO and PUBLIC
EMPLOYEE CLAIMS
APPELLEES

REVERSED AND REMANDED

Appellant, Lois Washington, suffered an admittedly compensable injury on February 15, 2002, while working for appellee University of Arkansas at Monticello. She worked as a custodian and fell down ten to twelve stairs when she tripped while carrying a vacuum cleaner. She received medical expenses and temporary-total disability benefits until August 12, 2002, when Dr. Bruce Safman determined that she was at maximum-medical improvement and assigned her a zero-percent disability rating. Prior to the August 12, 2002 assessment by Dr. Safman, appellant was involved in a motor-vehicle

accident on July 26, 2002. The ALJ concluded that the motor-vehicle accident was an independent intervening cause that “severed appellees’ liability.” The Commission affirmed and adopted the ALJ’s decision. For her sole point of appeal, appellant contends that there is no substantial evidence to support the decision of the Arkansas Workers’ Compensation Commission dismissing the appellant’s claim for additional temporary-total disability benefits. We reverse and remand this case to the Commission for proceedings consistent with this opinion.

The hearing before the ALJ was held on August 12, 2004. Appellant testified that she had worked for the university about a year prior to falling down the stairs on February 15, 2002. She stated that she landed on her back after falling down ten or twelve steps. She said that she was initially treated in the emergency room at the hospital in Monticello; that the ER doctor reported to Dr. Maxwell that she had a cracked vertebra; and that Dr. Maxwell told them to send her to the hospital in Pine Bluff where a Dr. P. B. Simpson reviewed her films and decided there was nothing that needed to be operated on and referred her back to Dr. Maxwell. Appellant stated that at some point she was referred to Dr. Safman; that she saw him several times during the summer of 2002; and that the last time she saw him was on August 12, 2002, when he released her and told her that she could return to full duty and had no impairment. She stated that she tried to work from that point until October 21.

Appellant explained that she saw Dr. Maxwell after being released by Dr. Safman and that Dr. Maxwell referred her to Dr. Ward. She stated that the first time she saw Dr.

Ward was on October 21, 2002, and that she was still under his care. She testified that he has not released her to return to work. She stated that she still has problems in her shoulders and lower back.

Appellant stated that she received workers' compensation benefits every two weeks until Dr. Safman released her to return to work full-time and that those benefits never started again after Dr. Ward took her off work in October 2002. She stated that she received a fourteen-percent impairment rating from Dr. Ward. She stated that before her fall at work, she did not have any problems at all with her spine, lower back, and shoulders. She acknowledged that a July 7, 2003 note by Dr. Ward stated that her current level of pain was in the three to four range on a daily basis. She said that was a little over a year ago and that her pain level has stayed about the same since that time.

Appellant explained that she was in a motor vehicle accident [on July 26, 2002]; that she was not hurt in that accident; that she went to Dr. Maxwell to be checked out to see if the accident had made any of her pre-existing problems worse; and that it had not.

The parties stipulated that appellant's husband, Rev. Jesse Washington, would testify in essentially the same manner as appellant to the effect that appellant did not have any problems before the fall.

Harriet Upshaw, a claim-determination manager with appellee Public Employee Claims, testified that she managed the claim for appellant. She explained that appellant's temporary-total disability benefits were paid from February 16, 2002, through May 5, 2002; that appellant was released for modified duty on May 6, 2002; and that she returned

to work at that time. Upshaw stated that the employer could no longer offer modified duty and that appellant last worked [modified duty] on July 2, 2002; that benefits were paid on July 3 and she received holiday pay on July 4 and 5; that benefits picked up again on July 6 and were paid through July 15, 2002; and that she was released for full duty effective August 13, 2002.

Ms. Upshaw explained that a note concerning appellant was made during Upshaw's absence on August 16, which stated in part: "Telephone call from Kay. Claimant returned to work Tuesday. Called today and said she'd reinjured her back on Thursday and would not be in. I advised that the claimant would need a release from the doctor. I did not know if you would want to handle this as an aggravation or a recurrence."

Standard of Review

When reviewing a decision from the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission and affirm that decision if it is supported by substantial evidence. *Fayetteville Sch. Dist. v. Kunzelman*, ____ Ark. App. ____, ____ S.W.3d ____ (Nov. 16, 2005). Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion. *Id.* Where the Commission denies a claim because of the claimant's failure to meet her burden of proof, the substantial-evidence standard of review requires that we affirm if its decision displays a substantial basis for the denial of relief. *Stone v. Dollar Gen. Stores*, ____ Ark. App.

____, ____ S.W.3d ____ (June 8, 2005). The issue is not whether the appellate court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, the appellate court must affirm the decision. *Kunzelman, supra*. When the Commission affirms and adopts the ALJ's opinion as the decision of the Commission, the Commission makes the ALJ's findings and conclusions the findings and conclusions of the Commission. *Id.* Therefore, in reviewing the case, we consider both the ALJ's decision and the Commission's majority opinion. *See id.* It is the Commission's function to determine witness credibility and the weight to be afforded to any testimony; the Commission must weigh the medical evidence and, if such evidence is conflicting, its resolution is a question of fact for the Commission. *Allen Canning Co. v. Woodruff*, ____ Ark. App. ____, ____ S.W.3d ____ (Sept. 7, 2005). The Commission's resolution of the medical evidence has the force and effect of a jury verdict. *Id.*

Appellant contends that "there is absolutely no medical evidence or any other proof in the record that supports" the ALJ's conclusion that the July 26, 2002 motor-vehicle accident was an independent intervening cause that severed appellees' liability for further benefits to appellant. The difficulty that we have with the Commission's decision in this case is that there were two significant intervening events between the time that Dr. Safman saw appellant on July 24, 2002, and when she first saw Dr. Ward on October 21, 2002. On July 24, Dr. Safman opined that appellant had "no guarding or muscle spasm present [and] no objective pathology is evident." He also reported that he planned to

reassess her in two weeks and that he believed she might be at maximum-medical improvement at that time.

Appellant had the motor-vehicle accident on July 26, 2002, the first significant intervening event. She testified that she was not hurt in the accident and that she saw her regular doctor, Dr. Maxwell, on the date of the accident to be checked to make sure it had not made any of her pre-existing problems worse. In an October 8, 2003 letter to appellant's counsel, Dr. Maxwell reported:

Concerning Lois Washington, as you know she was seen in the office on 7-26-03 [sic] with a motor vehicle accident and a cervical and thoracic strain. I don't know of any affect it has had on her work related injury. I feel that this is resolved at this point.

Appellant saw Dr. Safman again on August 12, 2002, after the accident, and he reported that she was "still complaining of diffuse tenderness throughout the cervical, thoracic, and lumbar spine . . . [but that h]er review of systems is otherwise unchanged. ... There is no guarding or muscle spasm present. There is no objective pathology. The only thing in evidence on testing is degenerative changes." He opined that she was at maximum-medical improvement and returned her to full duty with a zero-percent disability rating.

The second significant intervening event was that on or about Tuesday, August 13, 2002, appellant returned to work and continued to work until October 2002. Harriet Upshaw testified that an August 16 note made in Ms. Upshaw's absence stated that appellant had returned to work on Tuesday [August 13], that she had reinjured her back on Thursday [August 15], and that she would not be in. Ms. Upshaw testified that the

author of the note went on to state that she had advised appellant that she would need a release from the doctor and that the author was not sure if Ms. Upshaw would want to handle the incident as an aggravation or a recurrence. Ms. Upshaw further testified that she herself authored a note on August 19 that stated Dr. Maxwell's office had called, that appellant was there complaining of pain, and that Dr. Maxwell wanted to refer her back to Dr. Safman. Ms. Upshaw testified that she approved that referral. Ms. Upshaw also stated that appellant returned to work on August 19, a Monday. She then worked until on or about October 21, 2002.

On October 21, 2002, appellant saw Dr. Thomas Ward for the first time. The Commission determined that this was a valid referral, and we do not disturb that finding in this appeal. She was referred to him by Dr. Maxwell. In an October 21 letter to Dr. Maxwell, Dr. Ward reported in part:

REVIEW OF SYSTEMS: Revealed pain in her neck and shoulders, as well as her lower back occasionally radiating onto her right leg causing numbness in her leg and foot with additional numbness in her arms and hands. She has complaints of knee pain from an osteoarthritis standpoint and additionally complains of involuntary contractures of muscles in her hands, neck, arms, and legs. Recently she attests to feeling a sense of tilting or leaning posture of her head and neck and tremors in her hands bilaterally. She has constant neck pain and is also aware of an unpleasant type leg sensation at nighttime.

EXAMINATION: ...

....

Specific testing for axial skeletal and postural generators of her pain revealed a number of positive findings for her cervical, as well as lumbar spine. She has shortened anterior scalene and sternocleidomastoid muscles secondary to injuries and postural response in the post injury months. Likewise she has problems with her lower extremity contractures in the psoas muscle region as well as in the

quadratus lumborum location. These specifically fit well with her complaints of radiating pain at the locations that she previously indicated.

IMPRESSION: Post traumatic injury secondary to a fall with significant cervical and lumbar spine trauma and related post trauma stabilization and chronic pain development with limitations now in activities and personal quality of life issues. Chronic daily pain of a high intensity and modification or alteration in numerous activities have resulted in Ms. Washington becoming quite impaired from a social, as well as a vocational perspective due in large part to her need to manage her pain by limiting her activities.

. . . .

PLAN: . . . It has come to the attention of numerous authors that this prolonged slumping posture to the cervical and lumbar spine is ultimately a problem of its own some months to years later. *In Ms. Washington's case her examination indicates the presence of significant spasms of contracted muscle to her anterior spine region* and subsequent to this her posterior back extensor muscles are working overtime and their resulting diffuse muscle tenderness is her reward for this.

(Emphasis added.)

The Commission, in its opinion, adopted the findings of fact made by the ALJ. In pertinent part, those findings were:

2. After conservative treatment and diagnostic testing *showing only degenerative changes, the claimant was released to return to work with no impairment.* Therefore, I find respondents paid all appropriate benefits.

3. *Two days after her release, the claimant was involved in a motor vehicle accident. When she returned to the doctor her symptoms were worse, she was unable to work and repeat diagnostic testing showed a change in her condition.* Therefore, I find the motor vehicle accident was an independent intervening cause breaking the chain of liability.

(Emphasis added.) Viewing the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, we are not able to

conclude that the facts emphasized in paragraphs 2 and 3 of the Commissions's findings are supported by substantial evidence.

Based upon our understanding of the facts that were presented in this case, and as set forth previously in this opinion, appellant was examined by Dr. Safman on July 24, 2002, who, in a written report of that date, stated that he planned to reassess her in two weeks and that he believed she "may be at maximum medical improvement" at that time. However, contrary to the Commission's finding, Dr. Safman did not release appellant to return to work with no impairment on that date. On July 26, 2002, two days after this examination, appellant was involved in a motor-vehicle accident. Not until appellant was examined by Dr. Safman on August 12, 2002, did he report that she had reached maximum-medical improvement. Furthermore, the record before us reflects that it was not until the October 21, 2002 examination of appellant by Dr. Ward that appellant's symptoms were reported to be worse and that repeat diagnostic testing showed a change in her condition.

In light of these errors in the factual findings relied on by the Commission, the Commission has not made a proper *de novo* review of the record, and these erroneous factual findings require this court to reverse and remand the case to the Commission for a full re-examination of the relevant evidence.

Reversed and remanded.

BIRD and CRABTREE, JJ., agree.